

ORIGINAL
EX PARTE OR LATE FILED

RECEIVED

AUG 29 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 29, 2001

VIA HAND DELIVERY

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

00-258

Dear Chairman Powell:

We are writing to clarify the position of the Catholic Television Network ("CTN") and the National ITFS Association ("NIA") regarding the possibility of designating the 2500 – 2690 MHz band for flexible use. We have not asked, and are not now asking, for a flexible use designation. Indeed, in our written comments, CTN and NIA emphasized their commitment to fixed broadband deployment, and expressed serious concern with a flexible use designation in this band (see Attachments A and B). The most critical issue for CTN and NIA is the prompt removal of the cloud of uncertainty that hangs over the 2500 – 2690 MHz band by eliminating the band from further consideration as a candidate for 3G mobile services.

Nonetheless, if the Commission wants to designate the 2500 – 2690 MHz band for flexible use, CTN and NIA would not oppose such a designation subject to two conditions. First, all fixed uses of the band (including, for example, existing and planned fixed two-way broadband systems) must be protected from interference from any new flexible use of the band. Second, any new use of the band must be subject to a formal rulemaking process to determine if such use is feasible and, if so, what new rules are needed to accommodate any new use. These conditions should assure that the fixed broadband deployment plans of CTN and NIA's members can continue without further disruption.

In accordance with Section 1.1206 of the Commission's rules, an original and a copy of this letter and the associated attachments are being submitted with the Secretary's Office.

Sincerely yours,

THE CATHOLIC TELEVISION NETWORK



By: _____
Shook, Hardy & Bacon, LLP
Its Attorneys
Henry M. Rivera
Edwin N. Lavergne

THE NATIONAL ITFS ASSOCIATION



By: _____
Dow, Lohnes & Albertson, PLLC
Its Attorneys
Todd D. Gray

cc: Honorable Gloria Tristani
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Peter A. Tenhula
Adam Krinsky
Deena Shetler
Bryan Tramont
Jordan Goldstein
Samuel Feder
Monica Shah Desai
Julius P. Knapp
Geraldine A. Matisse
Charles Dziedzic

AUG 29 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems

ET Docket No. 00-258

**COMMENTS OF
THE CATHOLIC TELEVISION NETWORK**

Edwin N. Lavergne, Esq.
Henry M. Rivera, Esq.
J. Thomas Nolan, Esq.
Edgar Class III, Esq.
Shook, Hardy & Bacon, LLP
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Telephone: (202) 783-8400
Facsimile: (202) 783-4211

Counsel To The Catholic Television Network

Dated: February 22, 2001

of channel capacity permitted by the FCC may result in the spectrum being put to its highest and best use through the creation of shared networks.

V. It Is Not Feasible To Share The 2.5 GHz Band With 3G Mobile Services.

At paragraph 63 of the Notice, the Commission asks whether it would be feasible to add a mobile allocation to the 2.5 GHz band. In posing this question, the Commission appears to favor a flexible use approach that would allow licensees in the band to decide for themselves whether, when, and how to deploy mobile services.²⁷ CTN has no objection in principle to sharing or flexible use. However, any flexible use plan must protect the existing fixed uses of the band for which CTN's members have an immediate need.²⁸ After careful consideration, CTN has concluded that the risks of allocating the 2.5 GHz band for mobile use at this time far outweigh any benefits that may result.

In the adopting rules to permit two-way broadband service in the 2.5 GHz band, the Commission was faced with the enormously difficult task of engineering around the technical complexities associated with sharing spectrum between downstream and upstream operations.²⁹ The

²⁷ See Notice at ¶ 33 (“We believe that reserving spectrum in the United States exclusively for 3G mobile is not the best approach and that the determination of the best use of these bands should be left to market forces. ... [A] functioning systems of secondary markets could increase the amount of spectrum available to users, uses, and to new wireless technologies by making more effective use of spectrum already assigned to existing licensees.”); *see also* Notice at ¶ 63 (“[W]e seek comment on allocating the spectrum for Mobile and Fixed services on a co-primary basis. An allocation for Mobile service would allow for additional flexibility in the use of this band, allowing the spectrum to be used for the introduction of new advanced mobile and fixed communications services, including 3G systems.”)

²⁸ While CTN's members have a real and immediate need for the deployment of fixed broadband services, no such need exists with respect to 3G mobile services.

²⁹ See Two-Way Order, 13 FCC Rcd 19112, 19133-19135 (¶¶ 44-47).

rulemaking process succeeded, in part, due to the restriction of upstream transmitters to fixed locations.³⁰ If mobile upstream transmitters in the band were permitted to roam, protection of fixed receive sites at schools, colleges, community centers, hospitals, and other locations would be jeopardized.³¹ This was recognized by the Commission in its Interim Report, which correctly concluded that sharing between mobile and fixed services in the 2.5 GHz band is virtually impossible.³²

The Interim Report's analysis of sharing was based on the very conservative interference protection criteria set forth in the Commission's rules.³³ However, even if less conservative interference protection standards are assumed, sharing with mobile services still is not feasible because the interference potential from mobile transmitters is fundamentally different and more serious than fixed transmitters.³⁴

³⁰ See Two-Way Order at Appendix C, §§ 21.2, 21.909, 74.901 and 74.939 (to be codified at 47 C.F.R. §§ 21.2, 21.909, 74.901 and 74.939); *see also* Reply Comments of Petitioners, MM Docket 97-217 at 53 n. 131 (filed Feb. 9, 1998).

³¹ See Engineering Statement included as Exhibit J at 2.

³² See *e.g.*, Interim Report at 42 (“[L]arge co-channel separation distances are needed between 3G systems and ITFS/MDS systems to avoid causing harmful interference to ITFS/MDS systems.”); Interim Report at 50 (“Similar to MDS, it is clearly seen that the United States is heavily encumbered by ITFS operators...”); Interim Report at 53 (“Accordingly, based on the assumptions used for this initial analysis, sharing between 3G systems and ITFS/MDS operations is extremely problematic.”)

³³ See 47 C.F.R. § 74.903(a)(1) (45 dB co-channel); 47 C.F.R. § 74.903(a)(2) (0 dB adjacent channel). These interference ratios, designed for an analog environment, provide relatively conservative levels of protection when the desired to undesired signals are both digital. See Engineering Statement included as Exhibit J at 4, n. 2.

³⁴ See Engineering Statement included as Exhibit J at 2-3 analyzing the use of a 30-dB D/U ratio.

Moreover, even if sharing were feasible, any plan to incorporate mobile services into the 2.5 GHz band would cause substantial delay and additional market uncertainty that would be detrimental to the interests of educators, students, consumers, and commercial operators. It took the Commission nearly three years to work through a myriad of complex technical issues associated with converting the band from one-way video to two-way broadband use. Any rule changes to accommodate mobile use would take many more years. In the meantime, the continued regulatory uncertainty regarding what rules would govern this band would only further delay the roll out of new two-way fixed broadband wireless facilities.

VI. It Is Not Feasible To Segment The 2.5 GHz Band Without Seriously Compromising The Educational Services Provided By ITFS Licensees.

At paragraph 65 of the Notice, the Commission asks for comment on the possibility of relocating incumbents as a way to clear the band, or portions of the band, for 3G mobile operations.³⁵ At first blush, it may appear easy to segment the 2.5 GHz band to accommodate 3G mobile services by finding a proportionate share of equivalent spectrum elsewhere and moving ITFS licensees to a new home. However, segmentation is impractical because there is no block of spectrum that is large enough to accommodate relocation of all incumbents in the 2.5 GHz band with the propagation characteristics necessary to conduct existing and planned operations.³⁶

³⁵ Notice at ¶ 65 (“[W]e request comment on how incumbent users could be accommodated in other frequency bands. ... In particular, we request that commenters provide information about the type and the amount of costs to relocate incumbent MDS/ITFS operations.”)

³⁶ See Engineering Statement included as Exhibit J at 5. Bands below 3 GHz have already been identified in the Notice at ¶ 1. Bands above 3 GHz do not have the propagation characteristics that lend themselves to the existing and planned operations. In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886, 6889 ¶ 17 (1992).

ATTACHMENT B

capacity (as well as over 40% of the entire ITFS band) for 3G would do severe damage not only to existing operations over the country, but to the rollout of wireless broadband data services.

Wireless broadband system operators have made clear to ITFS licensees that, if any portion of the 2500-2690 MHz band is reallocated for 3G mobile services, their fundamental technical and business plans for the provision of fixed wireless broadband services in the band will be so seriously compromised that the rollout of such services will come to an end. Without the support of these system operators, even ITFS licensees whose spectrum is not taken (those in the band segments retained for ITFS) will lose technical, operational and financial support for their educational operations.

Thus, taking any of the 2500-2690 MHz band, as contemplated in the FCC's segmentation options, will result in the near total loss of the educational value provided by ITFS, as described earlier in these comments, and of the commercial and public value of fixed wireless broadband services.

V. NIA Does Not Support Adding a Mobile Allocation in the 2500-2690 MHz Band

In ¶ 64 of the NPRM, the FCC invites comments on the public interest costs and benefits of adding a mobile allocation to the 2500-2690 MHz band without any mandatory relocation. The FCC's notion is that the FCC might thereby facilitate a secondary market in the band to allow it to evolve to its highest valued use, whether that use is fixed broadband, mobile allocations or some other use.

NIA does *not* support adding a mobile allocation to the 2500-2690 MHz band, even if there is no mandatory reallocation. NIA believes that the FCC correctly suggested, in the *Interim Report*, that mobile services cannot share this spectrum with the ubiquitous fixed service

operations in the band. Thus, any addition of a mobile allocation would likely be of little consequence, as fixed services would continue to be offered rather than mobile services.

More importantly, NIA does not believe that it is in the interest of ITFS licensees, educators, students, adult learners, the general public seeking broadband access, or even the United States economy, to facilitate any attempt to substitute mobile services for fixed wireless broadband and educational video services that are now being deployed in the 2500-2690 MHz band. Even the regulatory or business uncertainty or delay caused by the mere addition of a mobile allocation to the 2500-2690 MHz band, and the inevitable resulting push to adopt new rules accommodating mobile use, would be contrary to the public interest.

Conclusion

The educational community represented by the National ITFS Association states its unequivocal objection to having any portion of the 2500-2690 MHz band re-allocated to mobile or any other service.

Respectfully submitted,

NATIONAL ITFS ASSOCIATION

By: Patrick J. Gossman, Ph.D.
Its Chair

NIA Counsel:
Todd D. Gray, Esq.
Dow, Lohnes & Albertson, pllc
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
202-776-2571

February 22, 2001